120—89

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 945.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

H. G. PARKER AND W. M. STEWART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED JULY 31, 1886.

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INDEX.

	Original.	Print.
Complaint	1	1
Answer (plea in bar)	4	2
Demurrer to plea in abatement	9	4
Order as to time to file briefs, &c	10	4
Order allowing United States attorney to file brief and points	11	4
Order overruling demurrer to plea, &c	11	4
Judgment	12	5
Clerk's certificate to judgment roll	13	5
Assignment of error	14	5
Writ of errors	15	6
Citation	18	6
Proof of service of citation	19	7
Clerk's certificate	20	7

1 In United States circuit court, 9th circuit, district of Nevada.

THE UNITED STATES, PLAINTIFF,
v.
H. G. PARKER AND W. M. STEWART, DEFENDANTS.

Now comes the United States, by Trenmor Coffin, att'y for the United States in and for the district of Nevada, and, complaining of the above-named defendants, for cause of action alleges and avers as follows:

That immediately prior to the 12th day of March, A. D. 1867, the said defendant H. G. Parker was appointed by the President of the United States to be superintendent of Indian affairs for Nevada, and that he accepted said appointment, and on the 12th day of March, A. D. 1867, said H. G. Parker duly executed a bond to plaintiff for the faithful performance of the duties of said office, with said defendant Wm. M. Stewart and one James W. Nye as his sureties thereon; that said bond was duly signed and executed by said Wm. M. Stewart and J. W. Nye, and was for the penal sum of twenty thousand dollars, and was conditioned:

2 "That whereas the above bounden Hubbard G. Parker has been appointed superintendent of Indian affairs for Nevada, and has accepted said appointment, now, if the said Hubbard G. Parker shall and doth at all times henceforth and during his holding and remaining in said office carefully discharge the duties thereof and faithfully expend all public moneys and honestly account for the same and for all public property which shall or may come into his hands, without fraud or delay, then the above obligation to be void; otherwise to remain in full force and virtue."

That after the execution of said bond, while said defendant Parker still held and remained in said office and prior to November 18th, A. D. 1869, the plaintiff placed in said defendant Parker's hands various and sundry large sums of money, to be by him expended for the benefit of the Indians of Nevada, and to be properly accounted for by him.

That on said November 18th, A. D. 1869, there then and ever since has remained and now remains of said moneys in said defendant Parker's hands, unexpended and unaccounted for, the sum of six thousand one hundred and eighty-four and $\frac{14}{100}$ dollars ($6,184.14).

3 That plaintiff has demanded an accounting with said Parker concerning said moneys and a repayment to plaintiff of said sum of $6,184.14, but to make any true account of said moneys or to return the same to plaintiff said defendant Parker has always heretofore failed, neglected, and refused, and still does fail, neglect, and refuse so to do; that said James W. Nye is dead, and that his estate has been administered upon and finally closed, and all of his property distributed to his heirs.

Wherefore plaintiff prays judgment against said defendants, H. G. Parker and W. M. Stewart, for the sum of six thousand one hundred and eighty-four and $\frac{14}{100}$ dollars ($6,184.14), together with interest thereon at the rate of six per cent. per annum, from the 18th day of November, A. D. 1869, till paid, and for her costs of suit in this cause expended, and that execution may issue therefor.

TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

(Endorsed:) In U. S. circuit court, 9th circuit, district of Nevada. The

4 United States vs. H. G. Parker and W. M. Stewart. Complaint. Filed Nov. 18, 1885. T. J. Edwards, clerk. T. Coffin, U. S. dist. att'y, for plaintiff.

In the circuit court of the United States, ninth circuit and district of Nevada.

UNITED STATES, PLAINTIFF,
v.
HUBBARD G. PARKER AND WM. M. STEWART, defendants.

Answer.—Plea in bar.

Now come the above-named defendants, and, for answer to the complaint of plaintiff herein, aver and show to the court—

That heretofore, to wit, on the 27th day of November, A. D. 1871, the said above-named plaintiff commenced an action in the circuit court of the United States, ninth circuit and district of Nevada, against said above-named defendants upon the official bond of the defendant Hubbard G. Parker, as superintendent of Indian affairs for Nevada (the same
5 identical bond as set out in the complaint herein), to recover the sum of fifteen thousand one hundred and eight and $\frac{62}{100}$ ($15,108.62) dollars, together with interest and costs.

That said action was commenced by the filing of a complaint and the issuance of summons thereon in due form of law.

That the said defendants appeared in said action by their attorneys, Ellis & King, and on, to wit, December 15th, A. D. 1871, filed their answer to the complaint, and among other things denied that there was any balance due the United States from the said defendant Hubbard G. Parker, as superintendent of Indian affairs for Nevada, or otherwise.

That said United States circuit court had jurisdiction of the parties and the subject-matter of said action.

That afterwards and on, to wit, the 1st day of December, A. D. 1873, said cause came on for trial in the said circuit court of the United States and district of Nevada before Hon. Lorenzo Sawyer, circuit judge, and Hon. E. W. Hillyer, United States district judge for Nevada, the
6 plaintiff being represented by its duly authorized and appointed attorney for the district of Nevada, Jonas Seely, and the defendants being represented by their attorneys, Messrs. Ellis & King.

That thereupon the defendants, by their attorneys, presented to the court a statement of accounts duly certified by the Second Auditor and Second Comptroller of the Treasury Department of plaintiff, showing that said defendant Hubbard G. Parker's, accounts with the United States as superintendent of Indian affairs for Nevada had been settled and adjusted, and that the said defendant Parker was discharged from all claims of the United States as superintendent of Indian affairs for Nevada, or otherwise, and that said Parker was not indebted to the United States in any sum whatever as superintendent of Indian affairs for Nevada, or otherwise.

Whereupon in open court, on motion of defendants' attorneys, the district attorney representing the United States consenting thereto, the following judgment was duly made and entered, to wit:

"Upon motion of Ellis & King, attorneys for defendants, and it

7 appearing to the court that the subject-matter in this suit has been adjusted and settled by the proper parties in Washington, it is therefore ordered that this cause be and the same is hereby dismissed."

Defendants further aver that said judgment so as aforesaid made and entered is a bar to any and all claims of the plaintiff in this action against each and all of the said defendants, and that the said plaintiff is estopped thereby and ought not to have or maintain this action.

And for further and separate answer, defendants aver that on the 21st day of June, A. D. 1872, the said defendant Hubbard G. Parker, as superintendent of Indian affairs for Nevada, made a full settlement with proper officers of the United States of all his accounts as superintendent of Indian affairs for Nevada, and his accounts were finally adjusted and settled by the Second Auditor and Second Comptroller of the Treasury Department of plaintiff, whereby he was fully discharged from all obligations and demands of the United States as superintendent of Indian affairs for Nevada, or otherwise.

Defendants further aver that the pretended claim against these
8 defendants for six thousand one hundred and eighty four and $\frac{14}{100}$ ($6,184.14) dollars is founded upon a pretended readjustment of the accounts of the said defendant Parker by the Second Auditor and Second Comptroller of the Treasury Department of plaintiff, made on the 25th day of June, A. D. 1884, and that such pretended readjustment was made without authority of law.

That the said settlement and adjustment made on the 21st day of June, A. D. 1872, aforesaid, was final and conclusive, and a bar to the pretended claim for $6,184.14 herein, or any claim of the United States against these defendants or either of them.

Wherefore defendants having fully answered, pray judgment for their costs.

JAMES D. TORREYSON,
Attorney for Defendants.

UNITED STATES OF AMERICA,
County of Ormsby, ss:

Hubbard G. Parker, being first duly sworn, on his oath deposes and says that he is one of the defendants in the above-entitled cause; that he has heard read the above and foregoing answer to plaintiff's com-
9 plaint herein and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

HUBBARD G. PARKER.

Subscribed and sworn to before me this 27th day of November, A. D. 1885.

T. J. EDWARDS,
Clerk & Com'r U. S. Cir. Court, Dist. Nevada.

(Indorsed:) In the U. S. circ. court, ninth circuit, district of Nevada. United States, pl'ff, vs. Hubbard G. Parker and Wm. M. Stewart, def'ts. Answer. Plea in bar. Filed Nov. 27, 1885. T. J. Edwards, clerk.

In U. S. circuit court, 9th circuit, district of Nevada.

THE UNITED STATES, PLAINTIFF,
vs.
H. G. PARKER ET ALS., DEFENDANTS.

Now comes the above-named plaintiff and demurs to the special
10 pleas in bar set up in defendants' answer, and for cause of demurrer shows to the court that said answer does not state facts sufficient to constitute a bar to the cause of action set out in plaintiffs' action.

TRENMOR COFFIN,
U. S. Dist. Att'y for Nev.

(Endorsed:) In U. S. circuit court, 9th circuit, dist. of Nevada. The United States vs. H. G. Parker et al. Demurrer to plea in abatement. Filed Nov. 27, 1885. T. J. Edwards, clerk. T. Coffin, U. S. dist. att'y.

Minutes of court showing proceedings in the case of The United States vs. H. G. Parker et al.

NOV'R 27, 1885.

UNITED STATES
vs.
H. G. PARKER ET AL.

The demurrer to the plea in bar herein was this day argued by counsel for the respective parties.

On motion and by consent ordered that the United States attor-
11 ney have thirty days in which to file and serve his brief herein; that defendants have twenty days thereafter to file and serve their brief, and that plaintiff then have five days to reply.

FEB'Y 25, 1886.

UNITED STATES
v.
H. G. PARKER ET AL.

On motion of Mr. Coffin, U. S. attorney, it is ordered that he has leave to file at this time his brief and points herein.

MARCH 22D, 1886.

THE UNITED STATES
v.
H. G. PARKER ET *et.*

Plaintiffs' demurrer to the plea in bar having been argued and submitted and duly considered by the court, it is now ordered that said demurrer be and is hereby overruled. The United States attorney then announced that the plaintiff desired to rest the cause upon the de-
12 murrer, and asked that an exception be allowed to the order overruling the same.

It is therefore ordered that such exception be allowed, and the same is here entered of record.

It is further ordered that this cause be and the same is hereby dismissed.

In United States circuit court for the district of Nevada.

THE UNITED STATES, PLAINTIFF,
v.
H. G. PARKER AND WM. M. STEWART, defendants.

This cause came on for hearing upon the demurrer to defendants' plea in bar; and the demurrer, after due consideration by the court, having been this day overruled; and the United States attorney having then announced that he rested the case upon the demurrer, it was thereupon ordered that said cause be dismissed.

Wherefore, by virtue of the law, and in consideration of the
13 premises aforesaid, it is hereby ordered and adjudged that said plaintiff in this action, the United States of America, have and take nothing by the complaint herein; that this cause be and is dismissed; and that the defendants go hence without day.

Attest:

T. J. EDWARDS.
Clerk.

Dated March 22, 1886.

UNITED STATES OF AMERICA,
District of Nevada, ss:

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original judgment now of record in my office, and that the annexed record is the judgment-roll in said action, no summons having been issued.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at my office in Carson City, this the 22d day of March, A. D. 1886, and in the year of our Independence the 110th.

T. J. EDWARDS,
Clerk.

(Endorsed:) U. S. cir. court, dist. Nevada. United States vs. H. G. Parker et al. Judgment roll. Filed Mch. 22, 1886. T. J. Edwards, clerk.

14 In U. S. circuit court, 9th circuit, district of Nevada.

THE UNITED STATES, PLAINTIFF,
v.
H. G. PARKER ET AL., DEFENDANTS.

Now comes the above-named plaintiff, by Trenmor Coffin, district attorney for the district of Nevada, and assigns as error in the above-entitled cause, the order of the court overruling plaintiff's demurrer to defendants pleas in bar, and ordering the suit dismissed upon plaintiffs' declining to further amend or plead, and prays for a reversal of such rulings and orders of the court.

TRENMOR COFFIN,
U. S. Dist. Att'y for the District of Nevada.

(Endorsed:) In U. S. circuit court, 9th circuit, district of Nevada. The

United States vs. H. G. Parker et al. Assignment of errors. Filed June 30, 1886. T. J Edwards, clerk. Trenmor Coffin, U. S. dist. att'y.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Nevada, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States as plaintiff, and H. G. Parker and W. M. Stewart as defendants, a manifest error hath happened, to the great damage of the said the United States, as by its complaint appears—

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Wash-

16 ington on the eleventh day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the eighth day of April, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] T. J. EDWARDS,
Clerk of the Circuit Court for the District of Nevada.

17 (Indorsed:) In the Supreme Court of the United States. The United States, plaintiff in error, v. H. G. Parker et al., defendants in error. Writ of error. Filed April 8, 1886. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

18 UNITED STATES OF AMERICA, *ss:*

To H. G. Parker and W. M. Stewart, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nevada, wherein the United States is plaintiff and you are defendants in error. to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-six.

GEO. M. SABIN,
Dist. Judge, District of Nevada, presiding at said Circuit Court.

19 Due service of within citation, by certified copy, is hereby acknowledged, this 17th day of April, 1886.

J. D. TORREYSON,
Attorney for Def'ts Parker & Stewart.

(Indorsed:) In Supreme Court of the United States. The United States, pl'ff in error, v. H. G. Parker et al., def'ts in error. Citation. Filed Ap'l 17, 1886. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

20 In the circuit court of the United States, ninth circuit, district of Nevada.

THE UNITED STATES, PLAINTIFF,
vs.
H. G. PARKER AND W. M. STEWART, defendants.

DISTRICT OF NEVADA, *ss:*

I, T. J. Edwards, clerk of the circuit court of the United States for the ninth judicial circuit and district of Nevada, do hereby certify that the foregoing nineteen written pages, numbered from 1 to 19, both inclusive, are a true copy of the record and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court at my office in Carson City, Nevada, this 30th day of June, A. D. 1886.

[SEAL.] T. J. EDWARDS,
Clerk.

(Indorsement on cover:) No. 945. The United States, plaintiff in error, vs. H. G. Parker and W. M. Stewart. Nevada, C. C. U. S. Filed July 31, 1886.

120-89

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES
vs.
H. G. PARKER AND W. M. STEWART. } No. 945.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES
vs.
H. G. PARKER AND W. M. STEWART. } No. 945.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

BRIEF FOR THE UNITED STATES.

This is a writ of error taken by the United States to a judgment of the circuit court of the United States for the district of Nevada, entered against the United States on a demurrer to the plea of the defendants. The complaint was filed on the 18th of November, 1885, to recover the sum of $6,184.14 on a bond of H. G. Parker, superintendent of Indian affairs for Nevada, on which W. M. Stewart was surety, for a default in not accounting for and paying over that amount of money which remained unexpended in his hands since the 18th day of September, 1869. The defendants, by plea, alleged that a suit had been brought on the same bond on the 17th of November,

1871, for $15,108.62, which was dismissed by the court on the 1st day of December, 1873; and, as a further defense, that H. G. Parker, on the 21st day of June, 1872, made a full statement and settlement of his account with the proper accounting officers of the Treasury.

PLEADINGS.

THE UNITED STATES
vs.
H. G. PARKER AND W. M. STEWART, defendants. } Complaint.

Now comes the United States, by Trenmor Coffin, attorney for the United States in and for the district of Nevada, and, complaining of the above-named defendants for cause of action, alleges and avers as follows:

That immediately prior to the 12th day of March, A. D. 1867, the said defendant H. G. Parker was appointed by the President of the United States to be superintendent of Indian affairs for Nevada, and that he accepted said appointment, and on the 12th day of March, A. D. 1867, said H. G. Parker duly executed a bond to plaintiff for the faithful performance of the duties of said office, with said defendant W. M. Stewart and one James W. Nye as his sureties thereon; that said bond was duly signed and executed by said William M. Stewart and J. W. Nye, and was for the penal sum of $20,000, and was conditioned:

> That whereas the above bounden Hubbard G. Parker has been appointed superintendent of Indian affairs for Nevada, and has accepted said appoint-

ment, now, if the said Hubbard G. Parker shall and doth at all times henceforth and during his holding and remaining in said office carefully discharge the duties thereof, and faithfully expend all public moneys, and honestly account for the same and for all public property which shall or may come into his hands, without fraud or delay, then the above obligation to be void, otherwise to remain in full force and virtue.

That after the execution of said bond, while said defendant Parker still held and remained in said office, and prior to November 18, A. D. 1869, the plaintiffs placed in said defendant Parker's hands various and sundry large sums of money, to be by him expended for the benefit of the Indians in Nevada, and to be properly accounted for by him.

That in said November 18, A. D. 1869, there then and ever since has remained and now remains of said moneys in said defendant, Parker's, hand, unexpended and unaccounted for, the sum of $6,184.14.

That plaintiffs have demanded an accounting with said Parker concerning said moneys, and a repayment to plaintiffs of said sum of $6,184.14, but to make any true account of said moneys or to return the same to plaintiffs said defendant Parker has heretofore failed, neglected, and refused, and still does fail, neglect, and refuse so to do; that said James W. Nye is dead, and that his estate has been administered upon and finally closed, and all his property distributed to his heirs.

Wherefore plaintiffs pray judgment against said defendants, H. G. Parker and W. M. Stewart, for the sum of $6,184.14, together with interest thereon at the rate of 6

per cent. per annum, from the 18th day of November, A. D. 1869, till paid, and for her costs of suit in this cause expended, and that execution may issue therefor.

TRENMOR COFFIN,
Attorney for the United States in and for the District of Nevada.

ANSWER.

In the circuit court of the United States, ninth circuit and district of Nevada.

UNITED STATES, PLAINTIFF,
vs.
HUBBARD G. PARKER AND WILLIAM M. STEWART, defendants.
} Plea in bar.

Now come the above-named defendants, and, for answer to the complaint herein, aver and show to the court—

That heretofore, to wit, on the 27th day of November, A. D. 1871, the said above-named plaintiff commenced an action in the circuit court of the United States, ninth circuit and district of Nevada, against said above-named defendants upon the official bond of the Defendant Hubbard G. Parker, as superintendent of Indian affairs for Nevada (the same identical bond as set out in the complaint herein), to recover the sum of $15,108.62, together with interest and costs.

That said action was commenced by the filing of a complaint and the issuance of summons thereon in due form of law.

That the said defendants appeared in said action by their attorneys, Ellis & King, and on, to wit, December 15, A. D. 1871, filed their answer to the complaint, and, among other things, denied that there was any balance due the United States from the said defendant Hubbard G. Parker, as superintendent of Indian affairs for Nevada, or otherwise.

That said United States circuit court had jurisdiction of the parties and the subject-matter of said action.

That afterwards, and on, to wit, the 1st day of December, A. D. 1873, said cause came on for trial in the said circuit court of the United States and district of Nevada, before Hon. Lorenzo Sawyer, circuit judge, and Hon. E. W. Hillyer, United States district judge for Nevada, the plaintiffs being represented by their duly authorized and appointed attorney for the district of Nevada, Jonas Seely, and the defendants being represented by their attorneys, Messrs. Ellis & King.

That thereupon the defendants, by their attorneys, presented to the court a statement of accounts, duly certified by the Second Auditor and Second Comptroller of the Treasury Department, of plaintiffs, showing that said defendant Hubbard G. Parker's accounts with the United States as superintendent of Indian affairs for Nevada had been settled and adjusted, and that the said defendant Parker was discharged from all claims of the United States as superintendent of Indian affairs for Nevada, or otherwise, and that said Parker was not indebted to the United States in any sum whatever as superintendent of Indian affairs for Nevada, or otherwise.

Whereupon, in open court, on motion of defendants' attorneys, the district attorney representing the United States consenting thereto, the following judgment was duly made and entered, to wit:

> Upon motion of Ellis & King, attorneys for defendants, and it appearing to the court that the subject-matter in this suit has been adjusted and settled by the proper parties in Washington, it is therefore ordered that this cause be, and the same is hereby, dismissed.

Defendants further aver that said judgment so as aforesaid made and entered is a bar to any and all claims of the plaintiffs in this action against each and all of the said defendants, and that the said plaintiffs are estopped thereby and ought not to have or maintain this action.

And for further and separate answer defendants aver that on the 21st day of June, A. D. 1872, the said defendant, Hubbard G. Parker, as superintendent of Indian affairs for Nevada, made a full settlement with proper officers of the United States of all his accounts as superintendent of Indian affairs for Nevada, and his accounts were finally adjusted and settled by the Second Auditor and Second Comptroller of the Treasury Department of plaintiffs, whereby he was fully discharged from all obligations and demands of the United States as superintendent of Indian affairs for Nevada or otherwise.

Defendants further aver that the pretended claim against these defendants for $6,184.14 is founded upon a pretended readjustment of the accounts of the said defendant Parker by the Second Auditor and Second Comptroller of

the Treasury Department of plaintiffs, made on the 25th day of June, A. D. 1884, and that such pretended readjustment was made without authority of law.

That the said settlement and adjustment, made on the 21st day of June, A. D. 1872, aforesaid, was final and conclusive, and a bar to the pretended claim for $6,184.14 herein, or any claim of the United States against these defendants or either of them.

Wherefore defendants, having fully answered, pray judgment for their costs.

JAMES D. TORREYSON,
Attorney for Defendants.

UNITED STATES OF AMERICA,
County of Ormsby, ss:

Hubbard G. Parker, being first duly sworn, on his oath deposes and says that he is one of the defendants in the above-entitled cause; that he has heard read the above and foregoing answer to plaintiffs' complaint herein and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

HUBBARD G. PARKER.

Subscribed and sworn to before me this 27th day of November, A. D. 1885.

T. J. EDWARDS,
Clerk and Commissioner, United States Circuit Court, District Nevada.

DEMURRER.

In United States circuit court, ninth circuit, district of Nevada.

THE UNITED STATES, PLAINTIFFS,
vs.
H. G. PARKER ET ALS., DEFENDANTS.

Now come the above-named plantiffs and demur to the special pleas in bar set up in defendants' answer, and for cause of demurrer show to the court that said answer does not state facts sufficient to constitute a bar to the cause of action set out in plaintiffs' action.

TRENMOR COFFIN,
United States District Attorney for Nevada.

ACTION OF COURT ON DEMURRER.

THE UNITED STATES
vs.
H. G. PARKER ET AL.

Plantiffs' demurrer to the plea in bar having been argued and submitted and duly considered by the court, it is now ordered that said demurrer be and is hereby overruled. The United States attorney then announced that the plaintiff desireds to rest the case upon the demurrer, and asked that an exception be allowed to the order overruling the same.

It is therefore ordered that such exception be allowed, and the same is here entered of record.

It is further ordered that this cause be and the same is hereby dismissed.

JUDGMENT.

In United States circuit court for the district of Nevada.

THE UNITED STATES, PLAINTIFFS,
vs.
H. G. PARKER AND WILLIAM M. Stewart, defendants.

This cause came on for hearing upon the demurrer to defendants' plea in bar; and the demurrer, after due consideration by the court, having been this day overruled, and the United States attorney having then announced that he rested the case upon the demurrer, it was thereupon ordered that said cause be dismissed.

Wherefore, by virtue of the law, and in consideration of the premises aforesaid, it is hereby ordered and adjudged that said plaintiffs in this action, the United States of America, have and take nothing by the complaint herein, that this cause be and is dismissed, and that the defendants go hence without day.

Attest:

T. J. EDWARDS,
Clerk.

SPECIFICATIONS OF ERROR.

1. The court erred in entering judgment against the United States and in favor of the defendants on the demurrer to the plea, which judgment is as follows:

THE UNITED STATES, PLAINTIFFS,
vs.
H. G. PARKER AND WILLIAM M. Stewart, defendants.

This cause came on for hearing upon the demurrer to defendants' plea in bar; and the demurrer, after

due consideration by the court, having been this day overruled, and the United States attorney having then announced that he rested the case upon the demurrer, it was thereupon ordered that said cause be dismissed.

Wherefore, by virtue of the law, and in consideration of the premises aforesaid, it is hereby ordered and adjudged that said plaintiff in this action, the United States of America, have and take nothing by the complaint herein; that this cause be and is dismissed, and that the defendants go hence without day.

Attest.

T. J. EDWARDS, *Clerk.*

(2) The court erred in not entering judgment in favor of the United States and against the defendants on the demurrer to their plea for the sum of $6,184.14, with interest thereon from the 18th day of November, A. D. 1869.

BRIEF OF ARGUMENT.

The complaint sufficiently alleges the appointment of H. G. Parker as superintendent of Indian affairs for Nevada, the acceptance, the execution of the bond, with the suretyship of William M. Stewart, his co-defendant, in the usual form. The breach assigned is "that on said November 18, A. D. 1869, there, then, and ever since has remained and now remains of said moneys in said defendant Parker's hands, unexpended and unaccounted for, the sum of $6,184.14; that plaintiff has demanded an accounting with said Parker concerning said money, and a repayment to plaintiff of said sum of $6,184.14, but to make any true accounting of said moneys, or to return the same to the

plaintiff, the said defendant Parker has heretofore failed, neglected, and refused, and still does fail, neglect, and refuse, so to do." The defendants by their plea did not directly deny this breach, nor allege the payment of the money, but pleaded, first, estoppel by judgment, and, second, estoppel by settlement with the proper accounting officers of the Treasury Department. It behooves the debtor who proposes to pay his creditors with a record instead of in the lawful money of the realm, to show that the debt sued for is actually in the record which he tenders for payment. In the language of this court, in the case of *Cromwell* v. *The County of Sac* (94 U. S., p. 353), it is said:

> In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the *point or question actually litigated* and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action.

In the case of *Davis* vs. *Brown* (94 U. S., p. 428), the same question is discussed and the conclusion stated that—

> When a judgment is offered in evidence in a subsequent action between the same parties upon a different demand, it operates as an estoppel only upon the matter actually at issue and determined in the original action, and such matter, when not disclosed by the pleading, must be shown by extrinsic evidence.

In *Russell* vs. *Place* (94 U. S., p. 608) discussing estoppel by judgment, it is stated:

> But to this operation of the judgment it must appear, either upon the face of the record, or be shown

> by extrinsic evidence, that the precise question was raised and determined in the former suit. If there be any uncertainty on this head in the record * * * the whole subject-matter of the action will be at large, and open to a new contention, unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined. (Vide also *Campbell* vs. *Rankin*, 99 U. S., p. 263.)

No extrinsic evidence in this case was offered to show that the claim now sued for was actually included in the cause of action alleged to have been considered in the former action pleaded. If, then, the plea does not state such facts, or set forth such a record, as to show that the claim now sought to be enforced was actually embraced in the former contention, the demurrer should have been sustained. The plea states the former action was on the same bond now sued on; but the bond is a penal one, with condition which might be subject to many breaches, each of which would subject the defendants to liability, and might be sued for as often as breaches occurred, until the whole penalty of the bond should be exhausted. The claim in the former action was to recover "the sum of $15,108.62, with interest and costs." But it is not alleged the money now sued for was included in or formed any part of that amount. If it did defendants should have so said. That which might have been included is not sufficient. "For a plea in bar must be certain, or it will be defective on demurrer." (Chitty's Pleadings, 1st vol., p. 560.)

These are all the facts alleged to have been contained in the former record set forth in the plea as to what was litigated in the former action. It is true it is stated the

plea in the former action "denied there was any balance due the United States." But the defendant in that action, by his plea, could not extend the issue beyond that which the plaintiff sued for, nor bar claims not asserted by pleading the non-existence of other claims not contained in the plaintiffs' declaration. The plea must be responsive to the claim, and if more is pleaded than is responsive to the claim, such excess is surplusage, and no issue is formed or tried thereon.

But the first plea in this case also sets forth that, in the former action, "the defendants, by their attorney, presented to the court a statement of accounts duly certified by the Second Auditor and Second Comptroller of the Treasury Department of the plaintiffs, showing that said defendant Parker's accounts with the United States as superintendent of Indian affairs of Nevada had been settled and adjusted, and that said defendant was discharged from all claims of the United States as superintendent of Indian affairs or otherwise, and that said Parker was not indebted to the United States in any sum whatever. As the defendant cannot extend his issue by his plea, neither can he by his evidence. The extrinsic evidence in such a case to determine what the point adjudged was, must, and should be, What did the plaintiffs claim, and did they claim for the demand now sued for? Not, how did defendant defeat the claim. Such evidence, unrebutted, might have been sufficient to defeat the claim if made, but it constitutes no step towards showing that the claim now sued for was either made or passed upon. But the judgment entered by the court in the former case is not such a judgment as would

estop the plaintiffs, even if the cause of action had been included in the former plea. The judgment pleaded is :

> Upon motion of Ellis & King, attorneys for the defendants, and it appearing to the court that the subject-matter of this suit has been adjusted and settled by the proper parties in Washington, it is therefore ordered that this cause be, and the same is hereby, dismissed.

The record pleaded is in fact, and, no doubt, in intent, but a consentable non-suit. The defendants' plea in this case states it was by consent. The record entry shows no trial, no evidence on the part of plaintiffs; but, on motion of defendants' attorneys, the court substantially states that the case, having been settled by the parties, need not be heard, and is therefore dismissed. In law this is merely a judgment of non-suit.

In the case of *Hawes* vs. *Tiernan* (53 Penna. State, p. 194), the entry by the court pleaded in bar was: "This day came the defendant, by his attorney, and the plaintiff, being solemnly called, came not, and, on motion of defendant, this attachment is abated and dismissed; and that the defendant recover against the plaintiff $5 and the costs by him about his defense in his behalf expended," construing which entry the supreme court of Pennsylvania rules: "Very evidently this was no more than a non-suit." *Vide* also *Laughlin* vs. *McGee* (79 Penna. State, 217).

Even a compulsory non-suit is not a bar to a subsequent action for the same claim. *Fleming* vs. *Insurance Co.* (4 Clark, 54), *Bournonville* vs. *Good* (10 Penna. State, 133).

Hence it is concluded the first plea is defective, and as to it the demurrer should have been sustained.

The second plea is—

> And for further and separate answer defendants aver that on the 21st day of June, 1872, the said Hubbard G. Parker, as superintendent of Indian affairs for Nevada, made a full settlement with the proper officers of the United States of all his accounts as superintendent of Indian affairs for Nevada, and his accounts were finally adjusted and settled by the Second Auditor and Second Comptroller of the Treasury Department of the plaintiffs, whereby he was fully discharged from all obligations and demands of the United States as superintendent of Indian affairs for Nevada, or otherwise * * * ; that said settlement and adjustment made on the 21st day of June, 1872, aforesaid, was final and conclusive and a bar to this pretended claim for six thousand one hundred and eighty-four and fourteen one-hundredth dollars ($6,184.14) herein, or any claim of the United States against these defendants, or either of them.

This plea is based on the supposed principle that the action of the accounting officers of the Treasury is conclusive on the courts as to the matters passed upon, and therefore a bar. This principle is not true. Such action by the accounting officers of the Treasury, duly certified, is only *prima facie* evidence, and the statement of such officers, otherwise than as the books would show, is not even evidence. The Supreme Court of the United States in passing upon the finalty of such an adjustment in the case of *Chorpenning* vs. *United States* (94 U. S., 399), says:

> The adjustment, having been made under a special law, rendered it in nowise different as regards the point we are considering from those made daily by the accounting officers of the Government under the general law conferring their powers and prescribing

their duties. The idea that the Government is finally concluded by the results at which they may arrive would be regarded as a novelty within and without the several Departments.

Vide also *United States* vs. *Gonssen* (10 Wall., 252); *United States* vs. *Stone* (106 U. S., 530); *Bruce* vs. *United States* (17 How., 598); *Hoyt* vs. *United States* (10 How., 134).

This plea is also defective as a bar, and judgment should have been entered in favor of the United States on the demurrer.

G. A. JENKS,
Solicitor-General.

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120-89

In the Supreme Court of the United States

OCTOBER TERM, 1886.

THE UNITED STATES
vs.
H. G. PARKER AND W. M. STEWART. } No. 945.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

BRIEF FOR DEFENDANTS.

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OCTOBER TERM, 1886.

THE UNITED STATES
vs.
H. G. PARKER AND W. M. STEWART. } No. 945.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

BRIEF FOR DEFENDANTS.

Defendant Parker was Superintendent of Indian Affairs for Nevada from March 12, 1867, to November 18, 1869. The bond in question was given to secure the faithful performance of the duties of his office during that period. The breach alleged in the complaint is the failure of Parker to account for and pay over $6,184.14, which he received during his term of office; and it is also alleged that this amount was due plaintiff on November 18, 1869, when Parker's term of office expired. The defendants, in their

first plea, allege that on the 27th day November, 1871, after the expiration of Parker's term of office, plaintiff commenced an action against these defendants to recover $15,108.62, and alleged in the complaint in that action that this sum was due plaintiff from defendants on account of the failure of Parker, as Superintendent of Indian Affairs, to account for or pay over the same to the Government. It is further alleged in the plea that defendants filed an answer in the last named case denying that there was any money due the United States from Parker, as Superintendent of Indian Affairs, or otherwise.

The case was submitted to the Court upon these pleadings and upon evidence showing that Parker's accounts were settled, and that he was not indebted to the Government. Whereupon, the following judgment was entered in favor of the defendants:

> "Upon motion of Eliis & King, attorneys for defendants, and it appearing to the Court that the subject-matter in this suit has been adjusted and settled by the proper parties in Washington, it is therefore ordered that this cause be, and the same is hereby, dismissed."

Assuming that this was a final judgment under the practice of Nevada, the question is, what was

decided in the former action as shown by the first plea in bar?

It was affirmed in the complaint in that action that defendants were then indebted to the plaintiff in the sum of $15,108.62 on the official bond in question. This was denied in the answer. The position of the Solicitor is, that although the defendants might owe the Government nothing on the breach of the covenant in the bond upon which the former action was brought, still they may now be indebted to the United States on other breaches of the conditions in the bond. Where, how, or when such breach could have occurred, we are not informed. It is certain that no breach could have occurred since the commencement of the former action because defendant Parker has not been Superintendent of Indian Affairs since that time, and no money could have been received by him since then in that capacity.

The judgment in favor of defendants in that action determines every possible question that can arise on the bond as to the liability of defendant Parker. It makes no difference whether the $15,108.62 sued for was all, or only a part, of the claim which the Government then had.

In *Secor* v. *Sturgis* (16 N. Y., p. 548), the Court say:

"The principle is settled beyond dispute

that a judgment concludes the rights of the parties in respect to the cause of action stated in the pleadings on which it is rendered, whether the suit embraces the whole or only part of the demand constituting the cause of action. It results from this principle, and the rule is fully established, that an entire claim, arising either upon a contract or from a wrong, cannot be divided and made the subject of several suits; and if several suits be brought for different parts of such a claim, the pendency of the first may be pleaded in abatement of the others, and a judgment upon the merits in either will be available as a bar in the other suits." (16 N. Y., p. 554.)

To the same effect are the following:

Baird v. *U. S.* (96 U. S., 430, 432); *Bendernagle* v. *Cocks* (19 Wend., 207); *Miller* v. *Covert* (1 Wend., 487); *Phillips* v. *Berick* (16 Johns., 136); *Farrington* v. *Payne*, (15 Johns., 432); *Herriter* v. *Porter* (23 Cal., 385); *Cunningham* v. *Harris* (5 Cal., 81); *Warren* v. *Cor ings* (6 Cush., 103); Bliss on Code Plead., Sec. 118; 6 Wait's Actions and Defenses, p. 776, Sec. 14.

AUTHORITIES CITED BY COUNSEL FOR PLAINTIFF NOT IN POINT.

Cromwell v. *The County of Sac*, *Davis* v. *Brown*, and *Russel* v. *Place*, in 94 U. S., and *Campbell* v. *Rankin*, in 99 U. S., cited by the Solicitor, have no application to the case at bar. In these cases the Court made a distinction between a judgment as

a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action.

In *Cromwell* v. *The County of Sac*, (94 U. S., p. 351), the Court said:

> "In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissable matter which might have been offered for that purpose. * * * But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel

> of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action." (94 U. S., pp. 352–3.)

The case at bar is a case where the prosecution of the second action is upon the same claim or demand upon which judgment was rendered. We are not attempting to use the judgment as an estoppel against a different cause of action. The quotations from the cases above cited appearing in plaintiff's brief have no reference to the judgment as an estoppel where the cause of action in the two cases is not the same; therefore the citations of counsel for plaintiff have no application to this case.

We submit that no possible construction of the pleadings would enable the plaintiff to maintain the present action if the decision of the Court in the prior action is a judgment upon the merits.

LAW GOVERNING THE CASE.

The effect of the judgment in this case must be determined by the laws of Nevada. It is so provided by Section 914 of the Revised Statutes of

the United States, which reads as follows:

> "Sec. 914. The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding."

See—

Spear Federal Judiciary (pp. 658, 659); *Nudd et al.* v. *Burrows* (91 U. S. 426, 441); *Indianapolis, etc. R. R. Co.* v. *Horst* (93 U. S. 291, 301, 302); *Sawin* v. *Kenny* (93 U. S., 289, 290); *Weed Sewing Machine Co.* v. *Wicks* (3 Dill., 261, 265.)

The case at bar, as it appears from the judgment, was dismissed after the evidence had been introduced and a full defense made. It is in effect found by the judgment itself that plaintiff had no cause of action at the time of the trial. Upon this state of facts it is manifest that the judgment ought to have been for the defendants, and we have no doubt that it would have been so rendered if, under the practice of Nevada, the judgment which was rendered had not been equally effective to put an end to the litigation.

It appears by the pleadings that the judgment was rendered on motion of defendants' attorneys

and that the attorney for the plaintiff consented to such entry. The reason justifying such consent appears in the judgment itself. No Government officer, however zealous, ought to proceed further after the matter in controversy is settled and adjusted; therefore the propriety of the action of the District Attorney cannot be questioned.

STATUTES OF NEVADA.

The judgment set out in the first plea was final under the Civil Practice Act of Nevada. That Act was passed on March 8, 1869, and will be found in the Statutes of Nevada of that year, page 218-19, and in the General Statutes of Nevada (1885), Section 3173. It is as follows:

> "An action may be dismissed, or a judgment of non-suit entered in the following cases: First—By the plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the Clerk to the defendant, who may have his action thereon. Second—By either party upon the written consent of the other. Third—By the Court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth—

> By the Court when upon trial and before the final submission of the case the plaintiff abandons it. Fifth—By the Court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly. In every other case the judgment shall be rendered on the merits.

The Statute above quoted recites five cases in which there may be a judgment of non-suit or a dismissal of the action, and then expressly provides that "In every other case the judgment shall be rendered on the merits." The case at bar is not included among the cases which may be dismissed or in which a non-suit may be entered, and is therefore a judgment on the merits. The case was not dismissed by the plaintiff himself before trial; it was not dismissed upon the written consent of the parties; it was not dismissed by the Court on account of the failure of plaintiff to appear on the trial; it was not dismissed because the plaintiff abandoned the case (on the contrary, the attorney for the plaintiff was present, took part in the proceedings, and consented to the judgment); it was not dismissed on motion of the defendants because plaintiff failed to prove a sufficient case to the jury. But it was

dismissed, as shown by the judgment itself, because the subject-matter of the dispute had been adjusted and settled. It was, therefore, by the Statutes of Nevada, a judgment on the merits.

The case of *Phillpotts* v. *Blasdel* (10 Nev., 19), is directly in point. In that case a judgment of dismissal was entered on the following stipulation:

> "It is hereby stipulated that this cause shall be dismissed, each party paying his own costs, and plaintiff being released from all liability on his undertaking for restraining order in said cause."

In regard to this judgment the Court says:

> "The judgment rendered is not embraced within the provisions enumerated in Section 151 of the Practice Act for a judgment of dismissal or non-suit, and is, therefore, by the terms of the Statute, made a judgment upon the merits. For the reasons recited it is against the plaintiff. Its legal effect is to operate as a bar to any other suit between the same parties on the identical cause of action. *Bank of the Commonwealth* v. *Hopkins* (2 Dana, 395); *Jarboe* v. *Smith* (10 B. Monroe, 257); *Merritt* v. *Campbell* (47 Cal., 542); (10 Nev. 23.)

The Statute of California is substantially the same as that of Nevada; in fact, the Statute of Nevada is a copy of the California Statute, so far

as it is material to the question under consideration.

In the case of *Merritt* v. *Campbell* (47 Cal., 542) the Court held that a judgment entered upon an agreement of counsel that a case should be dismissed, each party paying his own costs, did not fall within the enumeration of the cases within the Statute where a judgment of non-suit or dismissal could be entered, and was therefore, by the terms of the Statute, a decision on the merits.

Both the Supreme Courts of California and Nevada in construing the Statutes of those States give to them the same effect as the Courts of Kentucky give to a case "*dismissed-agreed.*" It will be observed by the cases cited by the Supreme Court of Nevada, to-wit: *Bank of the Commonwealth* v. *Hopkins* (2 Dana, 395), and *Jarboe* v. *Smith* (10 B. Monroe, 257), that an *agreed* dismissal of a case in Kentucky is a judgment on the merits and final.

SECOND PLEA.

The defendants, in their second plea, allege that the accounts of defendant Parker as Superintendent of Indian Affairs were finally settled and adjusted, and that he was fully discharged by the proper officers of the Treasury Department on the 21st of June, 1872, and that such settlement,

adjustment and discharge are conclusive upon the officers of the Executive Department of the Government. The plea is based upon Section 191 of the Revised Statutes of the United States, which reads as follows :

> "The balances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be *conclusive* upon the executive branch of the Government, and be subject to revision only by Congress or the proper Courts. The head of the proper Department, before signing a warrant for any balance certified to him by a Comptroller, may, however, submit to such Comptroller any facts in his judgment affecting the correctness of such balance, but the decision of the Comptroller thereon shall be final and conclusive, as hereinbefore provided."

This Section renders the settlement of Parker's accounts *conclusive and binding* upon the Executive branch of the Government. There are two modes named in the Statute whereby accounts once settled and adjusted by the proper officers of the Executive Department may be revised—one is by Congress and the other by the courts.

Not one of the cases cited by the counsel for plaintiff involves the question now under consideration. In *Chorpenning* v. *United States* (94 U. S., p. 399,) an Act of Congress was passed providing for the readjustment of the account. In the case of *United States* v. *Stone* (106 U. S., p. 525) the question was whether a statement of accounts by the Treasury Department was conclusive as against the sureties on an official bond. The Court held that it is only *prima facie* evidence against the bondsmen, but did not hold that a settled and adjusted account might be reopened or readjusted by the Treasury Department, or that such account was not conclusive upon the Executive branch of the Government. The cases of *United States* v. *Gaussen* (19 Wall., p. 198), *Bruce* v. *United States* (17 How., p. 437), and *Hoyt* v. *U. S.* (10 How., p. 109), cited by counsel, all arose under the Act of March 3, 1797, and not under the Act of March 30, 1868, above quoted, and are therefore no authority in this case. We have been unable to find any decision of this Court nullifying or modifying the Act of March 30, 1868.

Congress has not revised the adjustment of the accounts in question in the case at bar. The only other power which can revise the decisions of the Executive Department is the Courts. How and in what manner must a question of this kind be

brought before the Courts? If the Treasury Department may restate the account, and such restatement is *prima facie* evidence in an action at law, the statute is nullified. The settlement amounts to nothing. Every person who has dealt with the Government at any time, no matter how remote, may be sued at law and a *prima facie* case established against him by a readjusted atatement in the Treasury Department which, by lapse of time, the death of witnesses and the loss of vouchers, he is unable to controvert. Such a construction of the law would be a practical repeal of that clause which makes the settlement conclusive upon the Executive branch of the Government. The settlement in such case would not only not be conclusive, but would be no restraint whatever upon the Executive branch of the Government. It would not tend to prevent vexatious litigation or remove in the slightest degree the temptation presented on each change of Administration to use the power of the Government to vex, and, perhaps, destroy political opponents.

The revision by the Courts mentioned in the Statute cannot mean an action at law on a readjusted account manufactured in violation of that Statute; on the contrary, the manifest intention of Congress in authorizing a revision by the Courts of the judgments or decisions of the

special tribunals in the Treasury Department was to authorize a court of chancery to review those decisions in the ordinary mode of procedure in that Court, according to the principles of equity and good conscience. In such a proceeding the Government would be required to prove fraud, mistake, or such other facts as are required by the rules of equity to obtain relief in like cases. The citizen in such case would not necessarily suffer by reason of great delay or laches on the part of the Government, for the burden of proof would be on the United States, and all the circumstances of the case, such as death of witnesses and loss of vouchers, would be taken into consideration. After great delay in any such case which might come before the Court the apt language of Mr. Justice Field in *United States* v. *Flint*, (4 Sawy., p. 42), indicates how the claim of the Government would be viewed by an enlightened judge. He said :

> "It may also be suggested whether it is not a fundamental and inherent principle of the court of equity, at whose hands relief is now sought, to refuse to interpose in behalf of stale demands, not because they are barred by the Statute of limitations, nor because laches can be imputed to the complainant, but because from the lapse of time and the nature of the case it is probable that justice cannot be done. If this be the true

> ground of the refusal of equity to interfere in such cases, no distinction can be drawn between suits by the Government and those brought by private persons. The ascertainment of the truth may be as impracticable in the one case as in the other." (4 Sawy., p. 80"

A contest between the Government seeking to set aside an adjustment of accounts by the Treasury Department after years of delay, and a citizen, would not, in such a tribunal, be an *ex parte* affair, but a proceeding in which justice would be done; whereas a suit at law upon a claim readjusted *ex parte* in the Treasury Department, would place every citizen having had dealings with the Government at the mercy of the Executive Department. The Statute if observed and obeyed protects both the United States and citizens dealing with the Government. It prevents the reopening of accounts and the allowance of fraudulent claims by collusion between Government officials and claimants, and protects the citizen from vexatious prosecution and ruinous litigation.

The prohibition upon the Executive Department against interference with adjusted accounts is positive and unequivocal, but if it were otherwise the designation of Congress and the Courts as tribunals in which the decisions of the Department officers may be reviewed excludes by im-

plication all other modes of revision.

The case at bar furnishes an apt illustration of the abuses which must follow if the Statute is disregarded. Parker's accounts were settled and adjusted more than 14 years ago, since which time the Hon. James W. Nye. one of the sureties on the bond, has died, and many changes have taken place in the Indian country where defendant Parker was assigned to duty during his term of office. In the very nature of things it will now be impossible to produce the evidence which was at hand at the time the adjustment was made. If the Statute be not enforced numerous cases of this kind, and, perhaps, of a more aggravated character, may be instituted. Each successive Administration may vie with its predecessor in punishing political opponents; citizens will be unjustly punished, and the United States involved in great expense and loss.

Much good will result from a faithful observance of the law, and we submit, with all confidence, that the second plea ought to be held sufficient.

WM. M. STEWART and C. J. Hillyer
Counsel for Defendants.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

THE UNITED STATES
v.
HUBBARD G. PARKER *et al.* } No. 945.

Comes the Attorney-General for the United States and presents a letter from the Solicitor of the Treasury, inclosing a copy of a letter from the Second Comptroller of the Treasury, which correspondence is made a part of this motion, showing the importance of this case and the necessity for an early decision therein;

And moves the court to advance said cause on the docket and assign it for argument and submission at an early day.

A. H. GARLAND,
Attorney-General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., October 11, 1886.

SIR: On the 29th of July last I had the honor to transmit to you a transcript of the record in the case of United States *v.* Hubbard G. Parker *et al.*, taken by plaintiff to the Supreme Court from the district of Nevada. I am now in receipt of a letter from the Second Comptroller of the Treasury, urging the importance of a final adjudication of the question at issue at an early day, and suggesting that application be made to have the case advanced on the calendar. I respectfully transmit a copy of his letter for your consideration.

Very respectfully,

A. McCUE,
Solicitor.

The honorable the ATTORNEY-GENERAL.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., October 7, 1886.

SIR: I have received your letter of April 19, 1886, transmitting a report from the United States attorney for Nevada in the case of United States *v.* Hubbard G. Parker *et al.*, in which the attorney states that his demurrer to the defendants' plea in bar was overruled and judgment of dismissal rendered in favor of defendants. It also appears that, pursuant to your instructions, a writ of error has been taken out and the case sent to the Supreme Court.

The decision in this case seems to turn upon the question of the legal right of the accounting officers of the Treasury to reopen and readjust accounts that have once been settled.

Cases involving this point are frequently brought before this office, and I deem it important that the law governing the same should be early and definitely settled. Therefore I respectfully suggest application be made to have the case advanced upon the calendar, with a view of obtaining a decision as soon as practicable.

Very respectfully,

I. H. MAYNARD,
Comptroller.

J. D. T.

Hon. A. McCUE,
Solicitor of the Treasury.